M. J. PROBALANANDAN v. V. RAJAPATHAR.

[App. Civ. Juris. (Wilson, J.) March 14, 1951]

[K.L. — Civil Appeal No. 4 of 1951]

Civil Procedure Code, s. 362 — Suit — Withdrawal of — Filing of new Suit — Effect of — "Subject matter" — Meaning of.

The expression "Subject matter" used in s. 362(iii) of the Civil Procedure Code means "Cause of action", and it does not refer to any property in dispute in the case where the suit relates to property.

Cases referred to :—

(1) *Puttoo Khan v. Ahmad Zaman Khan* A.I.R. (1924) Oudh 180.

(2) *Bhullan & Ors. v. Dasrath Pandey & Ors.* A.I.R. (1929) Allahabad 67.

APPEAL from a decision of the Sessions Court, Kuala Lumpur.

J. Skrine for the appelant.

H. Y. Teh for the respondent.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Wilson, J. : — The appellant was the plaintiff in the Sessions Court, Kuala Lumpur in Civil Suit No. 78 of 1949, and the respondent was the defendant. The plaintiff is the owner of No. 18 Scott Road, Kuala Lumpur and the defendant was the monthly tenant of the premises paying a rental of $55 per month. The plaintiff alleged that he had served a notice on the defendant requiring him to quit the premises on the 31st July, 1949, on the ground that the defendant had not paid any rent since February, 1949. The plaintiff claimed an order for ejecting the defendant from the premises and a sum of $330 as rent from the 1st February, 1949 to 31st July, 1949, and also double rent of the premises from the 1st August, 1949, until the defendant delivered up vacant possession of the premises to him. During the course of this appeal I was informed that the claim for double rent was waived, and it was agreed that the claim for rent after the 1st August, 1949, should be for single rent only. This is not in accordance with the record of the Sessions Court in which it is recorded "Mr. Cumarasamy withdraws third prayer". The third prayer was the one relating to double rent. Furthermore the learned President of the Sessions Court when giving judgment for the plaintiff did not award any sum in respect of rent for any period subsequent to the 1st August, 1949. In the formal order, however, which was subsequently drawn up the plaintiff was awarded rent at the rate of $55 per month from the 1st day of August, 1949, till vacant possession of the premises was given to the plaintiff.

The plaintiff appealed to the High Court and as a result the judgment of the Sessions Court was set aside and it was ordered that the case be sent back to the President of the Sessions Court to continue the hearing of the case from the stage which had been reached, namely from the conclusion of the case for the plaintiff. The reason for this was that at the conclusion of the case for the plaintiff the judgment was given for him on the grounds that the defendant was in default of paying certain costs to the plaintiff as ordered by the Sessions Court during the proceedings. The record of the proceedings in the Sessions Court shows that on the 28th June, 1950, in the presence of counsel for the plaintiff and the defendant the continued hearing of this case was fixed for 2.15 p.m. on the 26th July, 1950. On that day a letter was written to the President of the Sessions Court by the plaintiff's solicitors stating that they had been instructed to withdraw the above suit which was fixed for hearing at 2.15 p.m. on that date. The letter was endorsed by Dr. Teh on behalf of the defendant "I consent to the above subject to costs of the suit". The record of the proceedings shows that the letter was received on the 26th July and that day Dr. Teh appeared before the Court. He is described as appearing for the pliantiff, but clearly this is a mistake for the defendant. The plaintiff was not represented. There is no record of what took place. All that is stated is "To 9th August, 1950". On the 9th August, 1950, Mr. Edgar appeared before the Court for the plaintiff and Dr. Teh for the defendant. The record shows "Plaintiff withdraws. Costs of $70 to defendant".

In the meantime the plaintiff had, through his solicitors, served another notice on the defendant, this time requiring him to quit and deliver up vacant possession of the house on the 31st August, 1950. On the 12th day of September, 1950, the plaintiff filed another plaint in a new action against the defendant, Civil Suit No. 104 of 1950. In this suit the plaintiff claimed an order ejecting the defendant from the house and rent at $55 a month for the months of February and March, 1949, and the period 1st September, 1949 to 31st August, 1950. He also claimed rent from the 1st September, 1950, till the defendant delivers up vacant possession of the house. The rate at which rent was claimed for this last period is not specified, but presumably it was intended to be at the rate of $55 month. In his statement of defence the defendant admitted receiving the notice to quit, but denied that any demand for rent had been made on

the premises. He further alleged that the notice to quit was void as at the time it was given there was in existence in the Sessions Court a suit which had not been concluded. Though not stated this clearly refers to Civil Suit No. 78 of 1949. The defendant also alleged that he was always ready and willing to pay the rent and that the plaintiff refused to accept the same. At the hearing of this case the plaintiff gave evidence and thereafter whether or not as a result of a submission made on behalf of the defendant is not clear, judgment was given for the defendant and in his grounds of judgment the learned President states: "I propose to dismiss this suit on the grounds that the plaintiff's claim is based on a cause of action which has been withdrawn under section 362 (i) of Cap. 7, and he is therefore precluded from proceeding again thereon. The suit is dismissed with costs".

At the hearing of the appeal counsel for the appellant argued that Civil Suit No. 78 of 1949 was withdrawn on the 26th July, 1950, and counsel for the respondent argued that it was withdrawn on the 9th of August, 1950. It is not in dispute that the suit was withdrawn under section 362 (i) of the Civil Procedure Code, which provides, in short, that at any time after the institution of the suit the plaintiff without obtaining an order of the Court may, by notice in writing filed in Court and served on the defendant, withdraw his suit. The plaintiff, in fact, served a notice of withdrawal on the Court on the 26th July, 1950, and this was endorsed, as I have already stated, by the defendant's counsel. Though the record of the proceedings dated the 9th of August states "Plaintiff withdraws", it is, in my view, perfectly clear that the withdrawal, in fact, took place on the 26th July, 1950. No order of the Court was necessary and the only reason for the case coming before the Court on the 9th August must have been to obtain an order for costs. In these circumstances I find that the defendant's plea that the notice to quit was void fails.

The question remains as to whether Civil Suit No. 104 of 1950 was rightly dismissed on the grounds that the cause of action was the same as that in Civil Suit No. 78 of 1949. Under section 362 (iii) of the Civil Procedure Code it is laid down that where the plaintiff withdraws a suit without the permission of the Court he shall be precluded from instituting a fresh suit in respect of such subject matter. I think it is abundantly clear that the expression "subject matter" means "cause of action", and it does not refer to any property in dispute in a case where the suit relates to property. To hold otherwise would, in my opinion, lead to the most absurd results, and I see no reason to differ from the judgment in *Puttoo Khan v. Ahmad Zaman Khan*[1]. In that case the question was the meaning of the words "subject matter" as used in Order 23 rule 1, sub-rule (3) of the Indian Civil Procedure Code. Order 23 rule 1 is similar to section 362 of the Civil Procedure Code in force in the Federation. The decision of the Court was that the words "subject matter" mean the cause of action for a claim.

In Civil Suit No. 104 of 1950 there were three prayers; firstly for rent already due; secondly for ejectment; and thirdly for rent from the 1st September, 1950 up to the date of delivering up of possession. In my opinion there were three separate causes of action and I propose to deal first with the claim for ejectment. In the case of *Bhullan and others v. Dasrath Pandey and others*[2] it was held that the subject matter of a suit for ejectment of a year to year tenant with effect from a certain year is not the same as his ejectment with effect from a subsequent year. The facts are not the same as in this case, although analogous. The notice to quit in Civil Suit No. 104 of 1950 was served as a result of the alleged non-payment of rent and the rent alleged to be unpaid was substantially the same rent as was claimed in Civil Suit No. 78 of 1949. However, the non-payment of rent was not, at any rate, the sole cause of action. The non-payment of rent without service of a notice to quit would not entitle the plaintiff to an order for ejectment. Even if a notice to quit was not the sole cause of action so far as ejectment is concerned and non-payment of rent is part of the cause of action, the notices to quit in the two cases were not the same and I hold that the cause of action in the two cases was not the same, and that the plaintiff was not precluded from bringing his claim for ejectment in Civil Suit No. 104 of 1950.

It remains to consider what is the cause of action in the second and third prayer of the plaintiff's claim in Civil Suit No. 104 of 1950. The plaintiff claims rent from the 1st day of September, 1949, to the 31st day of August, 1950, and rent for the months of February and March, 1949. In Civil Suit No. 78 of 1949 he claimed rent from the 1st of February, 1949 to the 31st July, 1949. It is quite clear that in Civil Suit No. 104 of 1950 he cannot claim any rent alleged to be unpaid as at 31st July, 1949, and is precluded from doing so by section 362 (iii) of the Civil Procedure Code. He is not precluded from claiming rent from the 1st August, 1949 to 31st August, 1950. It is true that he claimed in Civil Suit No. 78 of 1949 double rent from the 1st August, 1949, till vacant possession of the premises was given. Whether or no his claim

for double rent for that period was subsequently amended by agreement to a claim for single rent the fact remains that the cause of action for any rent after the 1st August, 1949, was at any rate in part the notice to quit calling on the defendant to give up vacant possession on the 31st July, 1949. The cause of action for rent from the 1st August, 1949 till 31st August, 1950 in Civil Suit No. 104 of 1950 did not depend on any notice to quit. Therefore I hold that the plaintiff is not precluded from claiming rent for that period.

The third prayer is a claim for rent from the 1st September, 1950, till vacant possession is given. The cause of action on this claim depends, at any rate, partly on the notice to quit from the 31st August, 1950, and is not the same cause of action as the claim for double rent from the 1st August, 1949, made in Civil Suit No. 78 of 1949.

In these circumstances I order a new trial in the Sessions Court at Kuala Lumpur on the issues as to what rent, if any, is due to the plaintiff from the 1st August, 1949 to the 31st August, 1950, and as to whether the plaintiff is entitled to an order for ejectment and as to whether he is entitled to rent from the 1st September, 1950 till the defendant delivers up vacant possession of the premises to the plaintiff. It follows that the appeal is allowed, except in so far as plaintiff's claim is for any rent alleged to be due prior to the 1st August, 1949, and I do order that the respondent pay the appellant the costs of this appeal. The costs of the trial in the Sessions Court will follow the result of the new trial.

Retrial ordered.

THE RUBBER SUPERVISION LICENSING FOR THE DISTRICT OF BENTONG, PAHANG v. TAN ENG SEONG.

[Court of Appeal (Foster Sutton, C.J., Abbott and Wilson, JJ.) February 8, 1951]

[F.M. — Civil Appeal No. 39 of 1950]

Rubber Supervision Enactment, 1937, s. 7(i) — Whether it is incumbent upon Board to hear a party before exercising its powers under the Enactment — Duty of the Board to furnish reasons for its decision.

The facts of this case are fully set out in the Judgment of Taylor, J. reported in (1950) M.L.J. at p. 226.

Held, on Appeal (1) that the right of a person, conferred by section 7(iii), to be heard by the Board only arises after it has exercised its discretion under section 7(i) of the Rubber Supervision Enactment, 1937, since the licensee is not "affected" until the Board has taken a positive act under the powers conferred upon it by the sub-section; (2) that the Board is an executive body and that when exercising its direction under section 7(i), it is performing a purely an executive function, but when a person affected has elected to be heard by the Board under section 7(iii), the Board's functions in relation to the hearing become quasi-judicial and the Board in such circumstances should inform the person affected of the reasons which led it to cancel his licence.

APPEAL from the judgment of Taylor, J. reported in (1950) M.L.J. 226.

C. M. Sheridan (Federal Counsel) for the appellant.

A. J. Bostock-Hill for the respondent.

Foster Sutton, C.J. : — This is an appeal from a judgment of Taylor, J. and an Order made in pursuance thereof, under which the appellant Board is required to hear a party before exercising its powers under sub-section (i) of section 7 of the Rubber Supervision Enactment, 1937, and to give the respondent, to quote from the Order, "before or at the hearing a fair opportunity to know why it was proposed to cancel his licence and to correct or contradict any statements prejudicial to his continuing to hold such licence which may have been made".

On behalf of the appellant it was argued that Taylor, J. erred in holding that it is incumbent upon the Board to hear a party before exercising its powers under section 7(i) of the Enactment, and in requiring it to inform the respondent of its reasons for the cancellation of his licence.

On the first point the appellant's advocate argued that the right of a person, conferred by sub-section (iii) of section 7, to be heard by the Board only arises after it has exercised its discretion under sub-section (i) of the section. He submitted that must be the case in view of the fact that the right to be heard by the Board is only conferred upon "any person affected", and that a person cannot be said to have been affected until the Board has taken a positive act under the powers conferred upon it by the sub-section. After hearing the argument the respondent's advocate conceded the point and, in my opinion, he was right in so doing.

On the second point it was contended that, in exercising its powers under section 7(i), the Board have an absolute discretion, that its functions are at all times purely executive ones, and that it is not required to furnish its reasons for arriving at a decision to a person affected by it who wishes to exercise his right to be heard by the Board.